



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Max Fish Plumbing and Heating Co.

File: B-244540

Date: September 27, 1991

Girard R. Visconti, Esq., Visconti & Petrocelli, Ltd., for the protester.

Lucie J. McDonald, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.

Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of invitation for bids (IFB) was proper where the Certificate of Procurement Integrity clause included in the solicitation did not contain a signature line or block, misleading the two low bidders and six other bidders that failed to sign the certificate, and where agency also plans to substantially reduce the scope of work upon resolicitation to delete services that are no longer required which could materially affect competition.

DECISION

Max Fish Plumbing and Heating Co. protests the cancellation after bid opening of invitation for bids (IFB) No. N62472-91-B-1652, issued by the Department of the Navy for the installation of individual heating controls in building Nos. 442 and 443 at the Naval Education and Training Center, Newport, Rhode Island.

We dismiss the protest.

The IFB, issued on April 19, 1991, contained the Certificate of Procurement Integrity clause, as set forth in Federal Acquisition Regulation (FAR) § 52.203-8. The certificate that was included in the IFB did not contain a distinct signature line or signature block for bidders to complete. The IFB did

not expressly instruct bidders to provide a separate signature on the certificate page; however, the certificate did contain a parenthetical request, as provided by FAR § 52.203-8, for the signature of the offeror or employee responsible for the certification.

The Navy received 16 bids in response to the IFB by the May 28 bid opening date. Max Fish, the apparent third low bidder at bid opening, and seven other bidders submitted signed certificates. Eight bidders failed to sign the certificate, including the apparent low and second low bidders. The apparent low bidder and several of the other bidders that did not sign their certificates did, however, complete the other portions of the certificate where lines were provided for those responses. The Navy determined that the failure of the IFB's Certificate of Procurement Integrity clause to provide a signature line or block for a signature, despite that clause's parenthetical request for an authorized signature, was a latent ambiguity that mislead bidders and required the cancellation of the IFB. The Navy, in its written determination and findings supporting the cancellation due to this solicitation deficiency, also states that the agency plans to substantially reduce the scope of work upon resolicitation to require the installation of heating controls in only one of the two buildings that initially were to be serviced.

Max Fish filed its protest with our Office on June 20, challenging the agency's cancellation of the IFB and its proposed resolicitation of the requirement. The protester contends that the solicitation was not ambiguous and that the Navy did not have a compelling reason to cancel the IFB after bid opening. The protester contends that as the low responsive bidder, it should be awarded the contract.

The Navy states that it based its cancellation and resolicitation determinations primarily upon our decision in Shifa Servs., Inc., B-242686, May 20, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 483. In that decision, we stated that a bid could properly be rejected as nonresponsive, pursuant to FAR § 14.404-2(m), for a bidder's failure to submit a signed Certificate of Procurement Integrity with its bid, but we found that because the certification clause included in the solicitation did not contain a distinct signature line, a number of the bidders, including the protester, reasonably were misled regarding the solicitation's signature requirement. Since the solicitation was ambiguous as to the precise manner by which bidders were to certify compliance with the procurement integrity requirements, we concluded that although bid prices had been exposed, it would be in the best interest of the government to cancel the IFB and resolicit the

requirement with a distinct signature line on the required procurement integrity certificate. Here, the solicitation also failed to provide a distinct signature line or block and half of the bidders failed to submit the required signed certificate. On this basis, the agency concluded that the result in Shifa would control and canceled the solicitation.

An agency should not cancel an IFB after bid opening absent a compelling reason. FAR § 14.404-1(a); Flintstone Crushing and Constr. Co., B-241803, Feb. 26, 1991, 91-1 CPD ¶ 216. An IFB may be canceled and all bids rejected before award but after bid opening when the agency determines in writing that a compelling reason to cancel exists due to, for example, inadequate or ambiguous specifications in the IFB or the agency's need to revise the specifications to reflect its actual minimum needs (including the deletion of services that are no longer required). FAR § 14.404-1(c).

Where, as here, a solicitation contains an inadequate Certificate of Procurement Integrity that failed to provide a distinct signature line (or adequate space and direction to sign the certificate), which misled bidders into submitting nonresponsive bids, the appropriate remedy is cancellation and resolicitation. Bosco Contracting, Inc., B-244659.4, Aug. 27, 1991, 91-2 CPD ¶ ____; PBM Constr.--Recon., B-242221.3; B-242221.4, Aug. 12, 1991, 91-2 CPD ¶ ____; see also Bade Roofing & Sheet Metal Co., B-243496, June 25, 1991, 91-1 CPD ¶ 606.1/ Moreover, in this case, it remains unchallenged that award under the solicitation would not serve the actual minimum needs of the government. The Navy's written support of its cancellation determination provides an additional compelling reason to cancel the IFB here since the specifications are to be revised to delete a substantial portion of the services that are no longer required, which

1/ Although the protester argues that a reasonably prudent bidder should have known to sign the procurement integrity certificate somewhere in the limited space above, below or beside the parenthetical request for such signature, our review of the certificate here, as in the cases cited above, does not support the protester's contention. Bidders were not adequately directed where to place the signature and might have assumed that an authorized signature elsewhere on the bid document would satisfy the certificate's signature requirement which, due to the ambiguous solicitation provision, would have rendered a bid nonresponsive. See discussion in Shifa Servs., Inc., supra. We note that the FAR, at § 52.203-8, as amended by Federal Acquisition Circular 90-5, now clearly provides a signature line on the Certificate of Procurement Integrity.

could materially affect competition upon resolicitation. See FAR S 14.404-1(c); see also Environmental Safety Consultants, Inc., B-241714, Feb. 26, 1991, 91-1 CPD ¶ 213. Based upon the inadequacies cited in the IFB, the agency thus had sufficient reason to cancel the solicitation.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel